

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CLARENCE MILLER and  
ROSALIE MILLER,

Plaintiffs,

v.

Civil Action No. 1:10CV213  
(STAMP)

BANK OF AMERICA,  
a Delaware corporation and  
BAC HOME LOANS SERVICING, LP,  
a qualified Texas limited partnership,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**GRANTING PLAINTIFF'S MOTION FOR LEAVE**  
**TO FILE AN AMENDED COMPLAINT**

I. Background

The plaintiffs, Clarence Miller and Rosalie Miller, filed a complaint alleging breach of contract, negligence, and breach of fiduciary duty. The plaintiffs have now filed a motion for leave to file an amended complaint seeking to add a declaratory judgment count and to add one paragraph to the breach of contract claim. No defendant filed a response. For the reasons set forth below, the plaintiffs' motion for leave to amend complaint their complaint is granted.

II. Applicable Law

Federal Rule of Civil Procedure 15(a)(1)(A) states, in pertinent part, that "[a] party may amend its pleading once as a matter of course . . . before being served with a responsive pleading." If a party seeks to amend its pleadings in all other cases, it may only do so "with the opposing party's written consent

or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Rule 15(a) grants the district court broad discretion concerning motions to amend pleadings, and leave should be granted absent some reason "such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment or futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Ward Elec. Serv. v. First Commercial Bank, 819 F.2d 496, 497 (4th Cir. 1987); Gladhill v. Gen. Motors Corp., 743 F.2d 1049, 1052 (4th Cir. 1984).

### III. Discussion

The plaintiffs seek to amend their complaint to add a paragraph to the breach of contract claim and to add a declaratory judgment count. This amendment does not constitute an unfair surprise or prejudice to the defendants. Further, the amended complaint is not futile. In addition, no defendant filed a response.

After a review of the record, this Court concludes that the plaintiffs have not exhibited any undue delay, bad faith, or dilatory motive. Moreover, the prejudice to the defendants is not significant as to prevent this Court from allowing the amendment, and this Court cannot conclude that the plaintiffs' amendment would

be futile. Accordingly, this Court grants the plaintiffs' motion for leave to file an amended complaint.

#### IV. Conclusion

For the reasons set forth above, the plaintiffs' motion for leave to file amended complaint is hereby GRANTED. The Clerk is DIRECTED to file the amended complaint, which was attached to the plaintiffs' motion for leave to file an amended complaint, Docket No. 17. The plaintiffs are DIRECTED to serve the amended complaint on the defendants. The parties served with the amended complaint shall make any defenses pursuant to Federal Rule of Civil Procedure 12 and any counterclaims or cross-claims pursuant to Federal Rule of Civil Procedure 13.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: April 13, 2011

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE